

Dispositions for dependent children.

(a) If a child is found to be dependent, the juvenile court may make any of the following orders of disposition to protect the welfare of the child:

(1) Permit the child to remain with the parent, legal guardian, or other legal custodian of the child, subject to conditions and limitations as the juvenile court may prescribe.

(2) Place the child under protective supervision under the Department of Human Resources.

(3) Transfer legal custody to any of the following:

a. The Department of Human Resources.

b. A local public or private agency, organization, or facility willing and able to assume the education, care, and maintenance of the child and which is licensed by the Department of Human Resources or otherwise authorized by law to receive and provide care for the child.

c. A relative or other individual who, after study by the Department of Human Resources, is found by the juvenile court to be qualified to receive and care for the child. Unless the juvenile court finds it not in the best interests of the child, a willing, fit, and able relative shall have priority for placement or custody over a non-relative.

(4) Make any other order as the juvenile court in its discretion shall deem to be for the welfare and best interests of the child.

(5) In appropriate cases, award permanent custody to the Department of Human Resources or to a licensed child-placing agency after termination of parental rights and authorization to place for adoption, without appointing a legal guardian, or award temporary custody to the department or a licensed child-placing agency without appointing a legal custodian or legal guardian.

(b) Unless a child found dependent shall also be found to be delinquent, the child shall not be confined in an institution established for the care and rehabilitation of delinquent children or in a juvenile detention facility. Nothing in this subsection shall be construed to prohibit the placement of dependent children in any other residential facility as defined in subdivision (22) of Section 12-15-102.

(c) There shall be a rebuttable presumption that children cannot be removed from the custody of their parents solely because of a need for emergency housing.

(d) In providing shelter or other care for children referred to or coming under the jurisdiction of the juvenile court, the juvenile court and the Department of Human Resources shall utilize only those facilities as have been established, licensed, or approved by law, or by agencies pursuant to law, for those purposes.

* (e) When a child is placed in the legal custody of the Department of Human Resources or any other department, agency, organization, entity, or person pursuant to this section and when the parent, legal guardian, or legal custodian of the child has resources for child support, the juvenile court shall order child support in conformity with the Child Support Guidelines as set out in Rule 32, Alabama Rules of Judicial Administration. The child support shall be paid to the Department of Human Resources or department, agency, any other organization, entity, or person in whose legal custody the child is placed and may be expended for those matters that are necessary for the welfare and well-being of those children placed in the Department of Human Resources or any other departments, agencies, organizations, entities, or person. In these cases, the juvenile court shall issue income withholding orders subject to state law. Any petition alleging dependency of a child filed by the Department of Human Resources shall contain a request for child support.

(f)(1) After a child has been placed in the legal custody of the Department of Human Resources, the department may file with the juvenile court a written request for appointment of a kinship guardian in cases where the juvenile court has entered an order under Section 12-15-315 affirming kinship guardianship as the permanent plan for the child.

(2) If the kinship guardian dies or becomes incapacitated, the department or the named prospective successor guardian in the kinship guardian subsidy agreement may file a written request for appointment of the successor guardian. The department or the prospective successor guardian may file for an ex parte order of temporary guardianship pending a hearing on the written request for appointment of a successor guardian.

(3) A written request for appointment of a kinship guardian or successor guardian shall be verified and allege the following with respect to the child:

- a. Facts that if proved will meet the requirements for a kinship guardianship or successor guardianship.
- b. The date and place of birth of the child, if known, and if not known, the reason for the lack of knowledge.
- c. The legal residence of the child and the place where he or she resides, if different from the legal residence.
- d. The marital status of the child, if applicable.
- e. The name and home and business addresses of an individual caregiver sought to be appointed as a kinship guardian or successor guardian and all residents of that individual's household.
- f. The relationship between the individual caregiver sought to be appointed as a kinship guardian or successor guardian and the child.
- g. The names and home and business addresses of the parents of the child, if known.
- h. The names and home and business addresses of legal guardians or legal custodians.
- i. The existence of any pending matters involving the custody of the child.
- j. A signed statement from the individual caregiver sought to be appointed as a kinship guardian or successor guardian that the individual agrees to accept the duties and responsibilities of being a kinship guardian or successor guardian.
- k. The existence of any other matters pending in the juvenile court involving the child and, if they exist, a statement that departments, agencies, individuals, or entities authorized or involved in the proceedings, by law or court order, consent to the relief requested.
- l. The results of a criminal history record background check of the individual caregiver seeking to be appointed as a kinship guardian or successor guardian and all adult residents of the household of the individual caregiver. In addition, the results of a child abuse record check of the individual caregiver seeking to be appointed as a kinship guardian or successor guardian and all residents 14 years or older of the household of the individual caregiver.
- m. Whether the child is subject to provisions of the federal Indian Child Welfare Act of 1978, 25 U.S.C. §1901, and, if so:
 1. The tribal affiliations of the parents, legal guardians, or legal custodians of the child; and
 2. The specific actions taken to notify the tribes of the parents, legal guardians, or legal custodians and the results of the contacts.

n. Other relevant facts in support of the written request to be appointed as a kinship guardian or successor guardian.

(4) After the juvenile court finds that an individual caregiver qualifies to be appointed as a kinship guardian, the requirements of subdivision (5) or (6) have been proved, and the best interests of the child will be served by the requested appointment, it may make the appointment. After a kinship guardianship appointment, the juvenile court may make any other disposition of the matter that will serve the best interests of the child.

(5) A kinship guardian may be appointed by the juvenile court only if:

a. A parent of the child is living but all parental rights in regard to the child have been terminated or restricted by a prior court order, provided that for this purpose only, the blood relationship with the child will continue to be recognized in defining relative caregiver;

b. The child has resided with the individual caregiver seeking to be appointed as a kinship guardian without the parent, legal guardian, or legal custodian for a period of six months or more immediately preceding the date the written request is filed, and a parent, legal guardian, or legal custodian having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance, and supervision for the child or there are extraordinary circumstances; and

c. No legal guardian of the child is currently appointed pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act, Chapter 2A of Title 26.

(6) A successor guardian may be appointed by the juvenile court only if all of the following requirements have been met:

a. The original kinship guardian subsidy agreement or amendments to such agreement names the prospective successor guardian as the person to become the legal guardian of the child in the event of the death or incapacitation of the kinship guardian.

b. The department has completed a criminal history record check on the prospective successor guardian and all adult residents of the household of the prospective successor guardian. The department also has completed a child abuse record check on the prospective successor guardian and all residents 14 years or older of the household of the individual caregiver.

c. No legal guardian of the child is currently appointed pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act, Section 26-2A-1.

d. A child that is 14 years of age or older must be consulted as to his or her position regarding the prospective successor guardianship and if the child is 18 years or older, he or she has consented to the successor guardianship if capable of giving effective consent.

(7) The burden of proof shall be by clear and convincing evidence, except that in those cases involving an Indian child as defined in the federal Indian Child Welfare Act of 1978, 25 U.S.C. §1901, the burden of proof shall be proof beyond a reasonable doubt.

(8) As part of a kinship guardianship order or successor guardianship order, the juvenile court may order a parent, legal guardian, or legal custodian to pay the reasonable costs of support and maintenance of the child that the parent, legal guardian, or legal custodian is financially able to pay. The juvenile court shall use the Child Support Guidelines established by rules of the Alabama Supreme Court to calculate a reasonable payment.

(9) The juvenile court may order visitation between a parent, legal guardian, or legal custodian and the child to maintain or rebuild a parent-child relationship if the visitation is in the best interests of the child.

(10)a. A kinship guardianship or successor guardianship is intended to be permanent during the child's minority similar to other permanency plan options. After the kinship guardian or successor guardian has been appointed

by the juvenile court, a parent, other person, entity, department, or agency, including the Department of Human Resources, may file a petition to revoke or modify the kinship guardianship or successor guardianship by proving not only that a material change in circumstances has occurred since the order granting the kinship guardianship or successor guardianship was entered, but also that the change would materially promote the child's best interest and welfare, and that the positive good brought about by the change would more than offset the inherently disruptive effect caused by uprooting the child.

b. If the juvenile court finds that a petition for revocation of the kinship guardianship or successor guardianship filed by the Department of Human Resources meets the standard in paragraph a., it shall grant the petition, and the child shall be placed in the legal custody of the Department of Human Resources. If the juvenile court finds that a petition for modification of the kinship guardianship or successor guardianship filed by the Department of Human Resources meets the standard in paragraph a., it shall grant the petition, and the child shall remain with the kinship guardian or successor guardian but shall be under the protective supervision of the department.

c. This subsection does not preclude a parent, other person, entity, department, or agency, including the Department of Human Resources, from filing a petition to modify other terms of the order of the juvenile court granting the kinship guardianship or successor guardianship, including, but not limited to, visitation, which shall be decided, after notice to the department, on the basis of what is in the best interests of the child.

(11)a. Except as provided herein, a kinship guardian or successor guardian shall have the same rights, responsibilities, and authority relating to the child as a parent, including, but not limited to, making decisions concerning the care and well-being of the child; consenting to routine, preventative, necessary, elective, cosmetic, and emergency medical, dental, and mental health needs; arranging and consenting to educational plans for the child; arranging and consenting to athletic, sport, or other activity participation; applying for financial assistance and social services for which the child is eligible; applying for a permit or license; applying for admission to a college or university; responsibility for activities necessary to ensure the safety, permanency, and well-being of the child; and ensuring the maintenance and protection of the child, and further provided, that the appointment of the kinship guardian or successor guardian terminates the education rights of the parent in favor of the kinship guardian or successor guardian and the kinship guardian or successor guardian shall be deemed the parent for federal IDEA and other educational purposes.

b. A kinship guardian or successor guardian may not consent to the adoption of the child or a name change for the child. The parent of the child shall retain the authority to consent to the adoption of the child or a name change for the child.

c. The parent, legal guardian, or legal custodian from whose custody the child was removed shall retain the obligation to pay child support.

d. Unless otherwise ordered by the juvenile court, a kinship guardian or successor guardian has the authority to make all decisions regarding appropriate visitation between the parent, legal guardian, or legal custodian and the child.

e. The appointment of a kinship guardian or successor guardian does not limit or terminate any rights or benefits derived from or between the child and parent, legal guardian, or legal custodian relating to inheritance or insurance.

f. A kinship guardianship or successor guardianship terminates when the child reaches 18 years of age, or when the child reaches age 21 if the child is eligible for a guardianship subsidy up to age 21 regardless of whether the juvenile court has continued jurisdiction, or when the kinship guardianship or successor guardianship is otherwise terminated or revoked by the juvenile court.

g. A certified copy of the court order appointing a kinship guardian or successor guardian shall be satisfactory proof of the authority of the kinship guardian or successor guardian, and letters of guardianship need not be issued.

h. A kinship guardianship or successor guardianship order is the legal authority to enroll the named child in school and consent to school-related activities and medical care for the child; to give permission or consent for other non-school related activities, placements, and events; and to enroll the child in health, homeowner, employment, motor vehicle, and other insurance.

i. A kinship guardianship or successor guardianship order is the legal authority for the kinship guardian or successor guardian to authorize or consent to medical care, dental care, and mental health care for the child.

j. Absent negligence, wantonness, recklessness, or deliberate misconduct, no person who acts in good faith reliance on a kinship guardianship or successor guardianship order without actual knowledge of facts contrary to that order is subject to criminal or civil liability or professional disciplinary action. This good faith immunity applies even though a parent, legal guardian, or legal custodian having parental rights or a person having legal custody of the child has contrary wishes. A person who relies upon a kinship guardianship or successor guardianship order is under no duty to make further inquiry or investigation.

(g)(1) A caregiver shall have the authority, without prior approval of the department, juvenile court, or circuit court, to allow a child in his or her care that is in foster care to participate in activities that are age or developmentally appropriate for the child based on a reasonable and prudent parent standard, provided the activities are consistent with provisions of any existing court order, individualized service plan, or promulgated policy of the department that provides guidance to caregivers concerning the reasonable and prudent parent standard. The guidance shall include factors for the caregiver to consider prior to allowing a child to participate in age or developmentally appropriate normal childhood activities.

(2) A caregiver shall be immune from liability in a civil action to recover damages for injury, death, or loss to person or property that results from a caregiver's decisions using a reasonable and prudent parent standard. This subsection shall not be construed to remove or limit any existing liability protection provided by law.

(Act 2008-277, p. 441, §18; Act 2010-712, p. 1744, §13; Act 2016-129, p. 290, §1; Act 2018-273, §1.)

210 So.3d 1133
Court of Civil Appeals of Alabama.

K.D.C.

v.

R.J.M.

K.D.C.

v.

D.A.M.

2150198 and 2150199.

|
May 27, 2016.

Synopsis

Background: Custodian sought child support. The Juvenile Court, Madison County, Nos. CS-13-900654 and CS-13-900654.01 and CS-14-900160 and CS-14-900160.01, Linda F. Coats, J., in separate cases, denied the claims for support against mother and father. Custodian appealed.

[Holding:] The Court of Civil Appeals, Moore, J., held that remand was warranted to allow the trial court to determine father's child-support obligation for his two children residing with custodian.

2150198—Reversed and remanded with instructions.

2150199—Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (2)

- [1] **Infants**—Parents
Infants—Determination and remand

Remand was warranted to allow the trial court to determine father's **child-support** obligation for his two **children** residing with custodian; statute allowed a juvenile court to order retroactive **child support** when a different juvenile court has previously declared the child dependent and had placed the child in the custody of a third party without an accompanying **child-support**

order, father's **children** were placed with custodian but no **child-support** order was issued, custodian petitioned for **child support**, and custodian submitted evidence showing that father had the resources to pay **child support**. Code 1975, § 12-15-314(e).

- [2] **Infants**—Parents

Custodian of dependent children failed to establish that mother of children was obligated to pay custodian child support; custodian failed to present evidence as to whether mother had the resources to provide child support. Code 1975, § 6-3-21.1(a).

Attorneys and Law Firms

*1134 Mickey J. Gentle of Moore & Gentle, Attorneys at Law, LLC, Huntsville, for appellant.

Submitted on appellant's brief only.

Opinion

MOORE, Judge.

In appeal no. 2150198, K.D.C. ("the custodian") appeals from a judgment entered by the Madison Juvenile Court ("the juvenile court") denying her claim for child support from R.J.M. ("the father") for the periods she exercised custody of K.E.M. and R.R.M., the children of the father and D.A.M. ("the mother"). In appeal no. 2150199, the custodian appeals from a judgment entered by the juvenile court denying her claim for child support from the mother for the period she exercised custody of R.R.M. We reverse the juvenile court's judgment in appeal no. 2150198; we affirm the judgment in appeal no. 2150199.

The custodian was awarded custody of K.E.M. by a judgment of the Jefferson Juvenile Court that was entered on May 2, 2013. The Jefferson Juvenile Court awarded

custody of R.R.M. to the custodian in a judgment entered on April 4, 2014. Neither the May 2, 2013, judgment nor the April 4, 2014, judgment addressed child support. The custodian filed in the juvenile court separate actions seeking child support from the mother for R.R.M. and from the father for K.E.M. and R.R.M.¹ The juvenile court entered judgments denying the custodian's requests for child support, and the custodian appeals.

The custodian testified that she had exercised custody of K.E.M. from April 2013 through July 15, 2014; however, K.E.M. turned 19 and was emancipated on December 1, 2013. The custodian testified that she had exercised custody of R.R.M. from November 1, 2013, through March 2015. The mother and the father testified that they were generally unaware that the custodian had been awarded custody of R.R.M., and they denied that they had any responsibility for paying child support.

^[1] Section 12-15-314(e), Ala.Code 1975, provides, in pertinent part:

"When a child is placed in the legal custody of the Department of Human Resources or any other department, agency, organization, entity, or person pursuant to this section and when the parent, legal guardian, or legal custodian of the child has resources for child support, the juvenile court shall order child support in conformity with the child support guidelines as set out in Rule 32, Alabama Rules of Judicial Administration."

*1135 See also *B.H. v. Tuscaloosa Cty. Dep't of Human Res.*, 161 So.3d 1215, 1219 (Ala.Civ.App.2014) ("When a juvenile court awards custody of children to [the Department of Human Resources] and determines that the parents are capable of contributing financially to the support of the children, the juvenile court must 'order child support in conformity with the child support guidelines set out in Rule 32, Alabama Rules of Judicial Administration.' § 12-15-314(e), Ala.Code 1975."), *cert. denied*, *Ex parte B.H.*, 161 So.3d 1220 (Ala.2014). The custodian argues that the juvenile court should have awarded her child support pursuant to § 12-15-314(e).

Section 12-15-314(e) clearly applies when a juvenile

court places a child that it has determined to be dependent in the custody of a third party, i.e., someone other than a parent. In this case, the Jefferson Juvenile Court, upon finding the children to be dependent and awarding their custody to the custodian, should have ordered **child support**, but it did not. That omission does not leave the custodian without redress. Section 12-15-314(e) can be read broadly enough to allow a juvenile court that has acquired jurisdiction over the matter to order retroactive **child support** when a different juvenile court has previously declared the child dependent and has placed the child in the custody of a third party without an accompanying **child-support** order. See also § 30-3-110 et seq., Ala.Code 1975 (authorizing action by legal custodian for retroactive **child support**). Given the strong public policy favoring **child support**, see *Morgan v. Morgan*, 275 Ala. 461, 156 So.2d 147 (1963), we believe the legislature intended that § 12-15-314(e) would apply in the context of the present cases.

The record shows that the custodian filed a CS-42 child-support-guidelines form to establish the child-support obligation of the father. See Rule 32(E), Ala. R. Jud. Admin. That form shows that the father had the resources to pay child support during the pertinent periods. The father did not file any child-support forms or testify as to his income. The juvenile court therefore had before it sufficient and undisputed information upon which to calculate the father's child-support obligation. The juvenile court thus erred in denying the custodian's claim for child support against the father with regard to K.E.M. and R.R.M. In appeal no. 2150198, we therefore reverse the juvenile court's judgment and remand the cause to the juvenile court with instructions to determine the amount of child support due the custodian from the father.

^[2] The custodian did not submit any **child-support** forms or present any evidence from which the juvenile court could have determined that the mother had the resources to pay **child support** or the amount of **child support** due from the mother. Therefore, we conclude that the custodian failed to meet the prerequisites for recovery of **child support** from the mother under § 12-15-314(e). The custodian petitions this court to remand the case to the juvenile court to allow her to present the necessary evidence, but she cites no legal authority authorizing such procedure. See Rule 28(a)(10), Ala. R. Civ. P. Accordingly, in appeal no. 2150199, the judgment in favor of the mother is affirmed.

2150198—REVERSED AND REMANDED WITH INSTRUCTIONS.

2150199—AFFIRMED.

All Citations

210 So.3d 1133

THOMPSON, P.J., and PITTMAN, THOMAS, and
DONALDSON, JJ., concur.

Footnotes

- ¹ The State of Alabama filed child-support actions on behalf of the custodian against the father in November 2013 and against the mother in March 2014. *See* Ala.Code 1975, § 38–10–4. The juvenile court later dismissed those actions, but subsequently set aside the dismissals, and, by separate orders entered on October 14, 2015, allowed the custodian to intervene to pursue her own claims for child support.

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161 So.3d 1215
Court of Civil Appeals of Alabama.

B.H.
v.
TUSCALOOSA COUNTY DEPARTMENT OF
HUMAN RESOURCES.

2120805, 2120806, and 2120807.

Jan. 31, 2014.

Rehearing Applications Denied April 11, 2014.

circuit court had waived requirement that mother pay **child support** to father, as filing of actions in juvenile court alleging that children were dependent triggered juvenile court's exclusive jurisdiction, juvenile court found children dependent and awarded custody of them to county department of human resources, and juvenile court determined that mother was capable of contributing financially to **support of children**, such that it was required to order mother to pay **support** in conformity with **child-support** guidelines. Code 1975, § 12-15-314(e).

5 Cases that cite this headnote

Synopsis

Background: County department of human resources (DHR) filed petitions seeking to have children declared dependent and also seeking custody of them. The Juvenile Court, Tuscaloosa County, Nos. JU-12-549.01, JU-12-550.01, and JU-12-566.01, Elizabeth C. Hamner, J., adjudicated children as dependent, ordered mother to pay child support, and awarded custody of them to DHR. Mother appealed.

[**Holding:**] The Court of Civil Appeals, Thompson, P.J., held that dependency judgments of juvenile court did not modify circuit court's prior judgment divorcing mother and father, in which circuit court had waived requirement that mother pay child support.

Affirmed.

Moore, J., concurred in the result, with writing.

Certiorari denied, Ala., 161 So.3d 1220.

Procedural Posture(s): On Appeal.

West Headnotes (3)

[1] Courts—Suits for divorce

Judgments of juvenile court in child-dependency proceedings ordering mother to pay **child support** did not modify circuit court's prior judgment divorcing mother and father, in which

[2] Courts—Suits for divorce

Subject to two exceptions, when a circuit court acquires jurisdiction regarding an issue of child custody pursuant to a divorce action, it retains jurisdiction over that issue to the exclusion of the juvenile court; the two exceptions are when emergency circumstances exist that threaten the immediate welfare of the child and when a separate dependency action is instituted.

3 Cases that cite this headnote

[3] Courts—Suits for divorce

A circuit court does not retain exclusive jurisdiction over a child whose custody is addressed in a divorce judgment when a separate action is initiated in a juvenile court alleging that the child is dependent.

5 Cases that cite this headnote

Attorneys and Law Firms

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Luther Strange, atty. gen., and Sharon E. Ficquette, gen. counsel, and Elizabeth Hendrix, asst. atty. gen., Department of Human Resources, for appellee.

Opinion

THOMPSON, Presiding Judge.

In November 2012, the Tuscaloosa County Department of Human Resources ("DHR") filed petitions in the Tuscaloosa Juvenile Court ("the juvenile court") seeking to have J.M.H., I.H., and A.H. (hereinafter collectively referred to as "the children") declared dependent and seeking an award of custody of the children.

The record indicates that B.H. ("the mother") and M.H. ("the father") adopted the children in 2001. In 2008, the mother and the father were divorced by a judgment of the Tuscaloosa Circuit Court ("the circuit court"). Pursuant to the 2008 divorce judgment, the father was awarded sole custody of the children. The divorce judgment provided that the mother had no child-support obligation because the mother and the father intended to file a joint action seeking to terminate the mother's parental rights to the children. It is undisputed that, before the initiation of DHR's dependency actions pertaining to the children, neither the mother nor the father had initiated an action seeking to terminate the mother's parental rights to the children, and, therefore, the mother's parental rights to the children had not been terminated at the time DHR became involved with the children.

In March 2013, in three separate decisions, the juvenile-court referee, based on the stipulation of the parties, determined the children to be dependent and awarded custody of them to DHR. In those decisions, the juvenile-court referee also scheduled a hearing before the referee for the determination of the mother's and the *1217 father's respective child-support obligations for the children. See § 12-15-314(e), Ala.Code 1975 ("When a child is placed in the legal custody of the Department of Human Resources ... pursuant to this section and when the parent, legal guardian, or legal custodian of the child has resources for child support, the juvenile court shall order child support in conformity with the child support guidelines as set out in Rule 32, Alabama Rules of Judicial Administration."). The juvenile court ratified those decisions of the referee on March 19, 2013. See Rule 2.1(G), Ala. R. Juv. P. ("The findings and recommendations of the referee shall become the order of the court when ratified by the original signature of a judge with authority over juvenile

matters."); and § 12-15-106(g), Ala.Code 1975 (same).

On May 16, 2013, the juvenile-court referee rendered decisions in which he reaffirmed the findings in the March 2013 decisions that had been ratified by the juvenile court and ordered the mother and the father to pay certain amounts in child support. Those decisions also ordered that the mother and the father pay child-support arrearages for April 2013 and May 2013. The juvenile court ratified those decisions of the referee on May 23, 2013.

The mother filed requests for a rehearing before the juvenile court pursuant to Rule 2.1, Ala. R. Juv. P., and § 12-15-106(f), Ala.Code 1975. The juvenile court conducted a hearing at which it received the arguments of the parties. On June 14, 2013, the juvenile court entered judgments in which it again reaffirmed the referee's May 16, 2013, child-support decisions. The mother timely appealed each judgment;¹ we consolidated the mother's appeals for the purpose of issuing one opinion.

¹¹ On appeal, the mother argues only that the juvenile court was without jurisdiction to enter its child-support awards. The mother contends that the juvenile court's June 14, 2013, judgments constituted invalid modifications of the circuit court's 2008 divorce judgment in which the circuit court had waived the requirement that the mother pay child support to the father. In support of her argument, the mother cites *Ex parte M.D.C.*, 39 So.3d 1117 (Ala.2009). In that case, the parties were divorced pursuant to a 2003 judgment of the DeKalb Circuit Court. In 2005, a juvenile court granted the petition of M.D.C., the mother in that case, seeking to terminate the parental rights of K.D., the father in that case, to the parties' two children. The DeKalb Circuit Court later denied a claim asserted by M.D.C. seeking to enforce K.D.'s child-support obligation for the children, and this court affirmed. *M.D.C. v. K.D.*, 39 So.3d 1105 (Ala.Civ.App.2008). Our supreme court granted M.D.C.'s petition for a writ of certiorari, reversing this court's judgment and holding that under the former Alabama Child Protection Act, former § 26-18-1 et seq., Ala.Code 1975, a parent's obligation to support his or her child is not extinguished when his or her parental rights are terminated. In reaching its holding, the supreme court, quoting from Judge Moore's dissent in *M.D.C. v. K.D.*, supra, stated, in relevant part:

"[In *M.D.C. v. K.D.*, t]he majority's reading of [former] § 26-18-7 [Ala.Code 1975], also violates established law that once a circuit court enters a child-support order in a divorce proceeding, the circuit court retains exclusive jurisdiction to modify that order,

which precludes a juvenile court from adjudicating child-support issues in a termination-of-parental-rights action. *See A.S. v. *1218 IV.T.J.*, 984 So.2d 1196, 1202 (Ala.Civ.App.2007). In this case, the trial court entered a child-support order as part of a divorce judgment in February 2003, requiring the father to pay \$540 per month for the benefit of his children. If the majority [in *M.D.C. v. K.D.*] is correct, the juvenile court terminated that child-support obligation in October 2005, although it lacked jurisdiction to do so. Rather than bestow upon juvenile courts jurisdiction that this court has heretofore not recognized, we should hold that the trial court had exclusive continuing jurisdiction over its own child-support order and that the judgment terminating parental rights could not have possibly affected the father's obligation as established in that order.' "

Ex parte M.D.C., 39 So.3d at 1124–25 (quoting *M. D.C. v. K.D.*, 39 So.3d at 1113 (Moore, J., dissenting)).

The mother relies on the quote above to contend that the juvenile court was without jurisdiction to enter the child-support orders in the underlying dependency actions. The mother, relying on *Ex parte M.D.C.*, asserts that the circuit court retained the exclusive jurisdiction to modify the child-support provision of the divorce judgment. Indeed, subject to certain exceptions, once a circuit court has jurisdiction to determine child custody, and, therefore, issues such as child support and visitation that are intertwined with the issue of custody, the circuit court retains jurisdiction as to custody and related issues until the child reaches the age of majority. *Scott v. Stevens*, 636 So.2d 444, 446–47 (Ala.Civ.App.1994). The mother contends in her reply brief that no party is disputing that the children are dependent or challenging the award of custody of the children to DHR. She appears to argue that under the facts of this case, i.e., when children of divorced parents are determined to be dependent and custody of them is transferred to a third party, the issue of child support is independent of the custody issue decided in the juvenile court. As is explained below, Alabama law does not support such a conclusion.

[2] [3] As DHR points out, the exceptions to the general rule, i.e., that a circuit court that has jurisdiction over the issue of custody of a child in a divorce action retains that jurisdiction, include situations in which the immediate welfare of the child is threatened or when an action alleging that the child is dependent is initiated. *A.G. v. Ka.G.*, 114 So.3d 24, 26 (Ala.2012); *Winford v. Winford*, 139 So.3d 179, 182 (Ala.Civ.App.2013). Our supreme court has explained:

"Subject to two exceptions, when a circuit court acquires jurisdiction regarding an issue of child custody pursuant to a divorce action, it retains jurisdiction over that issue to the exclusion of the juvenile court. *C.D.S. v. K.S.S.*, 963 So.2d 125, 129 (Ala.Civ.App.2007); *Ex parte K.S.G.*, 645 So.2d 297, 299 (Ala.Civ.App.1992). Those two exceptions are: 1) when emergency circumstances exist that threaten the immediate welfare of the child; and 2) when a separate dependency action is instituted. *M.P. v. C.P.*, 8 So.3d 316 (Ala.Civ.App.2008). The second exception is clearly applicable here."

A.G. v. Ka.G., 114 So.3d at 26. Thus, a circuit court does not retain exclusive jurisdiction over a child whose custody is addressed in a divorce judgment when a separate action is initiated in a juvenile court alleging that the child is dependent. *See Thompson v. Halliwell*, 668 So.2d 43, 44 (Ala.Civ.App.1995) (rejecting a father's argument that a juvenile court with jurisdiction over a dependent child could not address issues of custody and visitation because a circuit court originally had jurisdiction *1219 over the child pursuant to an earlier divorce judgment); *Ex parte K.S.G.*, 645 So.2d 297, 300 (Ala.Civ.App.1992) ("[T]he juvenile court may assume jurisdiction to adjudicate custody when DHR brings a separate action alleging dependency and requesting that custody be removed from the custodial parent due to neglect and inability to care for the child.").

In this case, DHR filed actions in the juvenile court alleging that the children were dependent. Those dependency actions triggered the exclusive jurisdiction of the juvenile court. *See* § 12–15–114(a), Ala.Code 1975 ("A juvenile court shall exercise exclusive original jurisdiction of juvenile court proceedings in which a child is alleged ... to be dependent...."). In *Ex parte M.D.C.*, however, unlike the facts of this case, the mother and the father were divorced by a circuit-court judgment and were later parties to a termination-of-parental-rights action initiated by M.D.C. in a juvenile court. In *Ex parte M.D.C.*, custody of the children at issue was maintained by M.D.C., and the juvenile court did not enter an order pertaining to custody of the children at issue. That case did not involve a situation in which a third party, such as DHR, sought to have the children declared dependent and to have custody of the children removed from both

parents. Thus, as DHR contends, the facts of *Ex parte M.D.C.* are distinguishable from those of this case in that the facts of this case fall within an exception to the general rule that a circuit court retains jurisdiction over a child whose custody has been previously determined in a divorce judgment entered by that circuit court.

In this case, the juvenile court obtained exclusive original jurisdiction over issues pertaining to the custody of the children when DHR filed its dependency petitions. The juvenile court found the children dependent and awarded custody of the children to DHR. When a juvenile court awards custody of children to DHR and determines that the parents are capable of contributing financially to the support of the children, the juvenile court must "order child support in conformity with the child support guidelines set out in Rule 32, Alabama Rules of Judicial Administration." § 12-15-314(e), Ala.Code 1975.²

The June 14, 2013, judgments of the juvenile court did not constitute modifications of the parents' divorce judgment. Rather, the juvenile court's judgments were valid judgments concerning custody of the children and child support, issues over which the juvenile court exercised jurisdiction pursuant to its dependency jurisdiction.³ Accordingly, we conclude that the mother has failed to demonstrate on appeal that the juvenile court was without jurisdiction to order her to pay child support for the benefit of her dependent children.

2120805—AFFIRMED.

2120806—AFFIRMED.

2120807—AFFIRMED.

PITTMAN, THOMAS, and DONALDSON, JJ., concur.

MOORE, J., concurs in the result, with writing.

*1220 MOORE, Judge, concurring in the result.

When the legislature repealed the former Alabama

Juvenile Justice Act ("the former AJJA"), former § 12-15-1 et seq., Ala.Code 1975, and replaced it with the current Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala.Code 1975, in 2008, it added a provision specifically requiring juvenile courts to order financially capable parents to pay **child support** for the benefit of dependent children placed in the legal custody of the Department of Human Resources. See § 12-15-314(e), Ala.Code 1975. That provision bestows subject-matter jurisdiction on juvenile courts to make any **child-support** order consistent with Rule 32, Ala. R. Jud. Admin., which would include the modification of a previous **child-support** order. See Rule 32(A). In this case, the Tuscaloosa Juvenile Court found J.M.H., I.H., and A.H. ("the children") dependent and placed them in the legal custody of the Tuscaloosa County Department of Human Resources. Consistent with § 12-15-314, the juvenile court thereafter had the power to modify the previous order of the Tuscaloosa Circuit Court that had relieved B.H., the mother of the children, from paying any **child support** on the premise that her parental rights would soon be terminated. Hence, the juvenile court did not act outside its jurisdiction in ordering the mother to pay **child support** for the benefit of her dependent children.

The mother relies solely on *Ex parte M.D.C.*, 39 So.3d 1117 (Ala.2009), to argue that the juvenile court lacked subject-matter jurisdiction to modify the **child-support** order of the circuit court. That case, as well as *A.S. v. W.T.J.*, 984 So.2d 1196, 1202 (Ala.Civ.App.2007), a case from this court cited in *Ex parte M.D.C.*, involved termination-of-parental-rights proceedings arising under the former AJJA. Hence, this court had no occasion to consider the effect of § 12-15-314 when deciding *Ex parte M.D.C.* Accordingly, I conclude that *Ex parte M.D.C.* does not support the mother's position. Therefore, I concur in the result.

All Citations

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Footnotes

¹ The father has not appealed the juvenile court's judgments.

- ² We note that the mother does not argue on appeal that she is unable to contribute to the support of the children, and she has not challenged the amount of her child-support obligation as determined by the juvenile court. Issues not argued in an appellate brief are deemed waived. *Robino v. Kilgore*, 838 So.2d 366, 370 (Ala.2002).
- ³ We express no opinion regarding the operation of the parents' divorce judgment entered by the circuit court.

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